IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 116 of 1985

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRATAPJI UMEDJI CHAVDA - Appellant(s)
Versus
ASHOK MILLS LTD. - Defendant(s)

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Appearance :
MR GIRISH D BHATT for Appellant(s) : 1,
MR AC GANDHI for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 27/07/2006

ORAL JUDGMENT

1. The present appeal has been filed by the appellant herein – original defendant No.2 (hereinafter referred to as “the defendant No.2”) challenging the judgment and decree passed by the learned City Civil Court, Ahmedabad, dated 21st February, 1984 passed in

Civil Suit No. 1463 of 1980 by which, the defendant No.2 was directed to hand over the vacant possession of the suit premises to the plaintiff together with mesne profits at the rate of Rs.8/- per month from the date of the suit till the possession is handed over.

2. The respondent herein – original plaintiff (hereinafter referred to as “the plaintiff”) filed Civil Suit No. 1463 of 1980 against the defendants to recover the possession of the suit premises together with licence fees and costs of the suit. The plaintiff was the owner of the suit room No. 170 municipal census No. 1476/1 and was given to deceased – Mahanand (who was initially joined as the defendant No.1 and who was subsequently deleted) by monthly licence of Rs.8/-. The deceased – Mahanand was serving as a gardener and therefore, he was given the suit premises for his residence. It was alleged in the plaint that the deceased was irregular in paying the licence fees, which was paid upto 31st March, 1974 and the suit premises was also

unlawfully transferred to the defendant No.2. It was also submitted that the defendant No.2 was the trespasser and the possession of the defendant No.2 was illegal. It was also further averred that the licence of the deceased has been terminated by notice dated 3rd November, 1978 and he was called upon to hand over the vacant possession of the suit premises together with the arrears of the licence fees, however, as the said notice was not complied with, the plaintiff filed the aforesaid suit.

3. The suit was resisted by the original defendant No.2 vide Exh.16. It was submitted that the deceased Mahanand walked out of the suit premises in the year 1955 and since then, he was residing in the suit premises as a tenant to the knowledge of the plaintiff and paid the rent upto 31st March, 1978. It was submitted that as an employee of the plaintiff mill, demanded a higher premium to accept him as a tenant and he refused to pay, and therefore, he was not treated as a tenant. The learned trial Court

framed the issues at Exh.24. The plaintiff's case was that the deceased was a licencee and against this, the case of the defendant No.2 was that the deceased was a tenant. The Officers of the plaintiff were examined. The defendant No.2 has deposited at Exh.58. The documentary evidences were also produced to prove that the deceased was serving in the plaintiff – mill as a gardener and that he was relieved from service in the month of December – 1959 and that a final payment was also made in the year 1960. On appreciation of evidence, the learned trial Court held that the deceased – Mahanand was a licencee and he was not a tenant and that the possession of the defendant No.2 was not legal and he is a trespasser and accordingly, the learned trial Court passed the judgment and decree directing the defendant No.2 to hand over the vacant possession of the suit premises to the plaintiff together with mesne profits at the rate of Rs.8/- per month. Being aggrieved and dissatisfied with the same, the appellant – original defendant No.2 has preferred the

present appeal.

4. The learned advocate appearing on behalf of the appellant has vehemently submitted that the learned trial Court has materially erred in holding that the deceased – Mahanand was the licencee and that he was not a tenant and that the possession of the defendant No.2 was illegal and he was a trespasser. On the other hand, the learned advocate appearing on behalf of the respondent – original plaintiff, while supporting the judgment and decree passed by the learned trial Court, has submitted that the deceased – Mahanand was as a gardener serving with the plaintiff – mill and that he was relieved in the year 1959 and was paid all his dues and thereafter, the defendant No.2 trespassed in the suit premises and that on appreciation of evidence, the learned trial Court has rightly passed the judgment and decree by holding that the possession of the defendant No.2 was illegal and he was a trespasser and therefore, it is requested to dismiss the

present appeal.

5. Heard the leaned advocates appearing on behalf of the parties.

6. It is not in dispute that the deceased – Mahanand was serving in the plaintiff – mill as a gardener, who died on 21st February, 1962 and that he was also relieved from service in the month of December – 1959. The Exh.69 proves that the deceased was made final payment in the month of January – 1960. The deceased was residing in the suit premises till his death. On appreciation of evidence, the learned trial Court held that the deceased was a tenant in the suit premises for use as residence by reason of his being in service or employment of plaintiff. So far as finding of the learned trial Court that the defendant No.2 was illegally in possession of the suit premises and he was a trespasser is concerned, the learned trial Court has relied upon the evidence of Senior Law Officer of the plaintiff – mill, who examined at

Exh.51. Considering the fact that the deceased was in service till December – 1959 and died in the year 1962 at Ahmedabad, the learned trial Court has rightly not believed the case on behalf of the defendant No.2 that the deceased left the premises in the year 1955. The defendant No.2 has failed to establish his legal possession. Considering the rent receipts upto 1973, which were in the name of the deceased – Mahanand, it cannot be said that the defendant No.2 has occupied the suit premises after the year 1974 unauthorizedly and he was a trespasser and accordingly, the learned trial Court has rightly passed the judgment and decree. This Court is in complete agreement with the reasoning and findings of the learned trial Court holding the defendant No.2 as a trespasser.

7. For the reasons stated above, the appeal fails and the same is required to be dismissed and is, accordingly, dismissed. Interim relief, if any, stands vacated forthwith. However, there shall

be no order as to costs.

(M.R.SHAH, J.)

kdc.